

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 457 Fertilizer

SPONSOR(S): Ingram and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 606

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Kaiser	Blalock
2) Community & Military Affairs Subcommittee			
3) Rulemaking & Regulation Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

In 2009, the Legislature passed CS/CS/CS/SB 494, relating to water conservation. Among other things, the bill directed the Department of Environmental Protection (DEP) to adopt and enforce a Model Ordinance (model ordinance) for Florida-Friendly Fertilizer Use on Urban Landscapes by January 15, 2010.

Current law encourages adoption and enforcement of the model ordinance by local governments, and it requires adoption by local governments that are located in an area where water is impaired by certain nutrients. Current law also allows local governments to adopt more stringent standards if specified criteria are met. Local governments that have adopted their own ordinance prior to January 1, 2009, are exempt from these provisions, as are farm operations.

The bill grants the Department of Agriculture and Consumer Services (department) with the exclusive authority to regulate the sale of fertilizer, including its composition, formulation, packaging, use, application, and distribution. In addition, the bill provides that such fertilizer regulations adopted by a county, municipality or other political subdivision are void, regardless of when the regulations were adopted. Lastly, the bill removes the authority of local governments, located in areas where water is impaired, to adopt more stringent standards than the model ordinance. As discussed in the "Drafting Issues/Other Comments" section of the analysis, the bill contains some provisions that conflict with current law.

The bill appears to have a negative fiscal impact of approximately \$900,000 on state government in the form of increased expenses for the department and an insignificant fiscal impact on local governments. (See the "Fiscal Comments" section for a more detailed explanation.)

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2009, the Legislature passed CS/CS/CS/SB 494, relating to water conservation. Among other things, the bill directed the Department of Environmental Protection (DEP) to adopt and enforce a Model Ordinance (model ordinance) for Florida-Friendly Fertilizer Use on Urban Landscapes by January 15, 2010. The model ordinance assesses penalties on licensed contractors in violation of certain requirements, including the requirement to inspect automatic landscape irrigation systems and report systems not in compliance with statutory requirements. It allows for regular maintenance of broken systems without assessing penalties when fixed within a reasonable time. The funds raised through penalties are dispersed for water-conservation activities and for administration and enforcement activities.

Current law provides legislative findings regarding the beneficial effect of the implementation of the model ordinance and encourages adoption and enforcement by local governments. It requires adoption by local governments that are located in an area where water is impaired by certain nutrients, and allows local governments to adopt more stringent standards if specified criteria are met. Local governments that have adopted their own ordinance prior to January 1, 2009, are exempt from these provisions, as are farm operations.

Currently, there are approximately 40 cities and counties that have adopted their own ordinances. Proponents of the bill favor a statewide fertilizer standard to reduce the varied and numerous local regulations. Opponents of the bill believe the local governments have a better grasp of what is necessary to protect the bays, rivers and lakes in their communities.

Effect of Proposed Changes

The bill grants the Department of Agriculture and Consumer Services (department) with the exclusive authority to regulate the sale of fertilizer, including its composition, formulation, packaging, use, application, and distribution. In addition, the bill provides that such fertilizer regulations adopted by a county, municipality or other political subdivision are void, regardless of when the regulations were adopted. Lastly, the bill removes the authority of local governments, located in areas where water is impaired, to adopt more stringent standards than the model ordinance.

B. SECTION DIRECTORY:

Section 1: Amends s. 403.9336, F.S.; removing legislative findings regarding local conditions that may necessitate implementation of additional or more stringent fertilizer management practices at the local level.

Section 2: Amends s. 403.9337, F.S.; deleting authority of local government to adopt more stringent standards than the model ordinance.

Section 3: Amends s. 570.07, F.S.; authorizing the Department of Agriculture and Consumer Services (department) to regulate the sale of fertilizer, including the composition, formulation, packaging, use, application, and distribution of fertilizer; preempting regulation of fertilizer to the state and the department, and specifying that such regulation of fertilizer by counties, municipalities, or other political subdivisions is void.

Section 4: Amends s. 576.181, F.S.; preempting regulation of fertilizer to the state and the department, and specifying that such regulation of fertilizer by counties, municipalities, or other political subdivisions is void.

Section 5: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Cost Type	Class	Unit Cost	Number	FY 11-12	FY 12-13	FY 13-14
Recurring						
Inspector (S&B*)	ESII	60,657	9	545,913	545,913	545,913
Case Processor (S&B)	ESII	60,657	1	60,657	60,657	60,657
Contracted Facilitator for Negotiated Rulemaking		20,000	1	20,000	0	0
Non-Recurring						
Standard package** (minus office rental)		6,587	9	59,283	24,201	24,201
Standard package		6,587	1	6,587	2,689	2,689
Vehicle		18,000	9	162,000	0	0
			Total	854,440	633,460	633,460
			Recurring	633,460	633,460	633,460
			Non-recurring	220,980		

854,440

*Salary and benefits

* *Inspectors will use home offices.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

The bill appears to have an insignificant fiscal impact on local governments in as far as the loss of fines and/or penalties related to fertilizer ordinance regulation. Local governments have also expressed concerns about the liability the local communities would incur for failure to maintain water quality in impaired water bodies.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The legislation may have a positive fiscal impact on private sector enterprises that apply fertilizer commercially since there would be a uniform set of rules statewide to comply with rather than a patchwork of different ordinances.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill contains contradictory language. In Section 2¹, the bill states that “any county or municipal government that adopted its own fertilizer use ordinance before January 1, 2009, is exempt from s. 403.9337, F.S.” However, in Sections 3 and 4², the bill states that “such regulation of fertilizer by a county, municipality, or other political subdivision is void, regardless of when adopted.”

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹ Section 403.9337(3), F.S.

² Sections 570.07(41), F.S. and 576.181(5), F.S., respectively